FILE COPY

Office - Supreme Court, U. S.
FILED
APR 16 1943
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 684

COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION,
Petitioner,

vs.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF OF PETITIONER.

GEO. B. SJOSELIUS,
Assistant Attorney General of Minnesota,
Counsel for Petitioner.

J. A. A. BURNQUIST,
Attorney General of Minnesota;
L. A. WILSON,
County Attorney, Mahnomen County;
LOWELL W. BENSHOOF,
County Attorney, Becker County;
A. B. STAUNING,
County Attorney, Clearwater County,
Of Counsel.

INDEX.

Subject Index.

	Page
Argument	9
I. The United States may not recover for the allottee, Isabelle Garden, the taxes upon the lands allotted to her and voluntarily paid by her	11
Tax Payments were voluntary	20
II. The allottee and the United States are bound by the result of an action which she elected to bring in the State Court to recover taxes voluntarily paid upon her allotment	27
Conclusion	28
Appendix	30
Grounds on which jurisdiction is invoked	1
Opinions below	1
Specification of errors	4
Statement of the case	1
Summary of argument	6
Table of cases	7

Table of Cases.

Baker v. *McCarthy*, 145 Minn. 167, 176 N. W. 643	7, 17
Board of County Commissioners of Caddo County, Oklahoma v. *United States*, 10 Cir. 87 F. 2d. 55	7, 22
Bryan County, Oklahoma v. *United States*, 123 F. 2d. 782	7, 22
Choate v. *Trapp*, 224 U. S. 665	7, 21
Continental National Bank v. *Holland Banking Co.* (C.C.A. 8), 66 Fed. 2d. 823	8, 28
Davis v. *Davis*, 305 U. S. 32	8, 27
Engebretson v. *West* (C.C.A. 8, 1940), 111 Fed. 2d. 528, 532	8, 28
Falvey v. *Board of County Commissioners*, 76 Minn. 257, 79 N. W. 302	7, 21
Fink v. *County Commissioners*, 248 U. S. 399	7, 24
Glacier County, Montana v. *United States*, 99 F. 2d. 733	7, 22
Gould v. *Board of County Commissioners*, 76 Minn. 379, 79 N. W. 303	7, 21

Page

Helvering v. *Rhodes' Estate* (C.C.A. 8, 1941), 111 Fed. 2d. 509 8
Holley v. *General American Life Insurance Co.* (C.C.A. 8, 1939), 101 Fed. 2d. 172 ..... 8, 28
Missouri Pacific Transportation Co. v. *Priest* (C.C.A. 8, 1941), 117 Fed. 2d. 32 ..... 8, 27
Morrow v. *United States*, 243 Fed. 854 ..... 7, 22
Prebyl v. *Prudential Insurance Co. of America* (C.C.A. 8, 1938), 98 Fed. 2d. 199 ..... 8, 28
Sweet v. *Schock*, 245 U. S. 192 ..... 7, 24
Treinies v. *Sunshine Mining Co.*, 308 U. S. 66, 78 ..... 8, 27
United States v. *First National Bank*, 234 U. S. 245 7
U. S. v. *Lee*, 108 Fed. 2d. 936 ..... 8, 27
U. S. v. *Nice*, 241 U. S. 591, 595 29
U. S. v. *Richards*, 27 Fed. 2d. 284 ..... 8, 27
U. S. v. *Spaeth*, 24 F. Supp. 465 ..... 7, 13
U. S. v. *Waller*, 243 U. S. 452 ..... 7, 14
Ward v. *Love County*, 253 U. S. 17 ..... 7, 21
Warren v. *Mahnomen County*, 192 Minn. 464, 257 N. W. 77 ..... 7, 26

Statutes Cited

Act of Map 8, 1906, 34 Stat. 182 ..... 8, 32
Act of May 27, 1908, 35 Stat. 312 ..... 7, 31
First Clapp Amendment of June 21, 1906, 34 Stat. 325, 353 ..... 7, 11
Second Clapp Amendment of March 1, 1907 34 Stat. 1034 ..... 7, 12
General Allotment Act, 24 Stat. 388 ..... 7, 30
Nelson Act, 25 Stat. 642 ..... 7, 30

Treaties

February 22, 1855, 10 Stat. 1165 7
March 11, 1863, 12 Stat. 1249 7
May 7, 1864, 13 Stat. 693 7
March 19, 1867, 16 Stat. 719 7

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 684

COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION,
Petitioner,

vs.

THE UNITED STATES OF AMERICA.

BRIEF OF PETITIONER.

Opinions Below.

The opinion and supplemental memorandum of the District Court (R. 22-30) are not reported. The opinion of the Circuit Court of Appeals (R. 47-52) is reported in 131 F. (2d) 936.

Grounds On Which Jurisdiction Is Invoked.

The grounds on which jurisdiction is invoked are set forth in the petition for writ of certiorari on pages 4 and 5.

Statement of the Case.

This action had its origin in a suit brought by the United States of America in 1940 against County of Mahnomen, its officers and the State of Minnesota. It involved seven

allotments in the White Earth Indian Reservation to Indians. It was dismissed as to the State of Minnesota.

Seven allotments are involved in this action but since the principal and only important issue involves parcel 7 alone, the allotment of Isabelle Garden, we shall state the facts only in so far as they involve that allotment.

Isabelle Garden is a living, female, mixed-blood Indian of the White Earth Reservation in Minnesota who was born in the month of July, 1893, and therefore became an adult in July, 1911 (R. 20). She was allotted the east half of the southeast quarter of section five (5) in township one hundred forty-four (144) north, of range forty-one (41) west, of the Fifth Principal Meridian in Mahnomen County, Minnesota, on December 13, 1902, as her original allotment Number 3612 and a trust patent was issued to her therefor (R. 17-18). A patent in fee was issued to her on December 8, 1919. On August 24, 1917, said Isabelle Garden (being then an adult, mixed-blood Indian) paid taxes for the years 1911, 1912, 1913, 1914 and 1915 on her said allotment and on December 24, 1917, paid those for 1916. She paid the taxes for 1917 and 1918 in semi-annual installments as permitted by the statutes of the state of Minnesota before the same became delinquent. The 1919 taxes were paid by her in one sum on May 24, 1920, and before the same became delinquent. The 1920 taxes were permitted to become delinquent but were paid in full on February 17, 1922. The taxes for 1921 were paid in installments before they became delinquent. Taxes for 1922 to 1927, inclusive, were redeemed on June 30, 1936 (R. 19). The taxes for those years, 1922 to 1927, inclusive, were redeemed by Isabelle Garden through her attorney, Robert Pearson (R. 13). There is no allegation, proof or even suggestion that said taxes were paid under duress or involuntarily. Nor, since many of them were paid currently

and year after year, could the claim well be made that the payments were other than voluntary payments (R. 14).

In February, 1923, said allottee, Isabelle Garden (being then an adult, mixed-blood Indian to whom a patent in fee simple had issued December 8, 1919, pursuant to the policy of the United States with respect to adult, mixed-blood allotments but without application on the part of said allottee) commenced an action in the District Court in and for Mahnomen County, Minnesota, Fourteenth Judicial District, to recover the taxes paid by her as above set out for the years 1911 to 1921, inclusive. A demurrer to her complaint was interposed and sustained by order of said court dated March 11, 1927. This was the final order in said action and she did not appeal therefrom (R. 19-20).

The United States (though its amended complaint does not allege that Isabelle Garden, or any allottee, had paid any taxes voluntarily or otherwise) sought recovery of all taxes paid by said Isabelle Garden as above set out and was by the District Court allowed recovery of those paid for the years 1911 to 1921, inclusive, aggregating $405.97, and denied recovery of those for the years 1922 to 1927, inclusive (R. 33).

The case was submitted to the trial court upon two stipulations of fact. The first was made on January 8, 1941 (R. 11). The second was made on April 8, 1941 (R. 13). The trial court made its findings of fact, conclusions of law, and order for judgment on July 9, 1941 (R. 15).

Judgment was entered upon the findings and conclusions of the District Court (R. 31). The County of Mahnomen by appropriate motions sought to vacate said judgment and amend said findings and conclusions or have a new trial (R. 33), and said motions being denied (R. 41), an appeal to the United States Circuit Court of Appeals, Eighth Circuit, followed (R. 41). The United States appealed from

the judgment (R. 44). The appeals were entitled, respecively, *County of Mahnomen, a municipal corporation, appellant,* v. *United States of America, appellee* (No. 12340 Civil), and *United States of America, appellant,* v. *State of Minnesota, et al., appelleees* (No. 12376 Civil).

On December 7, 1942, the United States Circuit Court of Appeals decided both cases affirming that part of the judgment (R. 31 to 33) of the United States District Court for the District of Minnesota, Sixth Division, entered March 7, 1942, which allowed recovery of the sum of $405.97, the aggregate of taxes for 1911 to 1921, both inclusive, paid by Isabelle Garden, an adult, mixed-blood Indian of the White Earth Reservation in Minnesota upon her Indian allotment, and reversing that part of said judgment which in effect denied recovery of taxes paid by said allottee upon her said allotment for the years 1922 to 1925. Thereafter a petition for certiorari was filed herein and granted on March 15, 1943.

Specification of Errors.

The United States Circuit Court of Appeals, Eighth Circuit erred:

1. In affirming the judgment of the District Court of the United States for the District of Minnesota in so far as it provides for recovery of taxes paid for the years 1911 to 1921.

2. In reversing the judgment of the District Court in so far as it denies recovery of taxes paid for the years 1922 to 1925.

3. In construing the following language of the Clapp Amendments:

> "That all restrictions as to the sale, incumbrance, or *taxation* for allotments within the White Earth Reservation in the State of Minnesota, heretofore or here-

> after held by adult mixed-blood Indians, are hereby removed, * * *." (Italics ours.) (Petition, p. 4, 5.)

so that adult, mixed-blood Indians of the White Earth Reservation are denied the power to waive their vested right to have their allotted lands immune from taxation.

4. In holding that the United States of America is not bound by the waiver of immunity from taxation by such Indians.

5. In construing the Clapp Amendments and the Act of May 8, 1906, 34 Stat. 182 (Petition, p. 5) so as to hold that adult, mixed-blood Indians of the White Earth Reservation are not fully and completely emancipated.

6. In construing the Clapp Amendments so that such Indians cannot voluntarily subject their allotted lands to taxation.

7. In holding that the United States of America can recover moneys voluntarily paid by such Indians as taxes upon such allotted lands.

8. In holding that the United States of America may sue in its own name on behalf of such adult, mixed-blood Indians to recover moneys voluntarily paid as taxes by such Indians upon such allotted lands.

9. In holding that the United States of America is not bound by the result of an action instituted by such an Indian to recover moneys paid as taxes upon such allotted lands.

10. In holding that the Act of May 8, 1906, 34 Stat. 182 (Petition, p. 5) does not subject adult, mixed-blood Indians of the White Earth Reservation to all civil laws of Minnesota and secure to them the benefits of all such laws.

Summary of Argument.

I. This is a case of first impression. It involves Mahnomen County which lies wholly within the White Earth Reservation in Minnesota. Adult, mixed-blood Indians of that reservation are under the Clapp Amendments owners in fee simple of allotted lands for which a trust patent has been issued. Such Indians are competent to handle their allotted lands. They have a vested right to have their lands immune from taxation. As competent persons they may waive such immunity. Isabelle Garden did waive such immunity by voluntarily paying the taxes upon her allotted lands. Such payments were voluntary. There is no evidence to the contrary. The District Court found that they were voluntary. The Circuit Court did not disagree. Under Minnesota law, voluntary payments of taxes cannot be recovered. The Circuit Court wholly failed to distinguish between the law as to full-blood Indians and the law as to adult, mixed-blood Indians. The trust as to Isabelle Garden's allotted lands terminated when she voluntarily paid the taxes, as she did year after year, and often before delinquency. The Circuit Court mistakenly applied decisions construing laws relating to Oklahoma and other lands instead of the applicable law, including the Clapp Amendments. The taxes having been voluntarily paid and the trust having been terminated, the United States had neither the duty nor the power to recover the taxes so paid. This is supported by the well recognized fact that the principal purpose of Indian supervision and legislation is to bring them to a state of competency. This, Congress said in the Clapp Amendments, has been achieved in Minnesota. The United States cannot recover taxes voluntarily paid by Isabelle Garden.

Cases Cited—Part I.

Baker v. *McCarthy*, 145 Minn. 167; 176 N. W. 643;
Board of County Commissioners of Caddo County, Oklahoma v. *United States*, 10 Cir. 87 F. (2d) 55;
Bryan County, Oklahoma v. *United States*, 123 F. (2d) 782;
Choate v. *Trapp*, 224 U. S. 665;
Falvey v. *Board of County Commissioners*, 76 Minn. 257, 79 N. W. 302;
Fink v. *County Commissioners*, 248 U. S. 399;
Glacier County, Montana v. *United States*, 99 F. (2d) 733;
Gould v. *Board of County Commissioners*, 76 Minn. 379, 79 N. W. 303;
Morrow v. *United States*, 243 Fed. 854;
Sweet v. *Schock*, 245 U. S. 192;
United States v. *First National Bank*, 234 U. S. 245;
United States v. *Spaeth*, 24 F. Supp. 465;
United States v. *Waller*, 243 U. S. 452;
Ward v. *Love County*, 253 U. S. 17;
Warren v. *Mahnomen County*, 192 Minn. 464; 257 N. W. 77.

Statutes Cited.

Act of May 27, 1908, 35 Stat. 312;
First Clapp Amendment of June 21, 1906, 34 Stat. 325, 353;
Second Clapp Amendment of March 1, 1907, 34 Stat. 1034;
General Allotment Act, 24 Stat. 388;
Nelson Act, 25 Stat. 642.

Treaties.

February 22, 1855, 10 Stat. 1165;
March 11, 1863, 12 Stat. 1249;

May 7, 1864, 13 Stat. 693;
March 19, 1867, 16 Stat. 719.

II. Isabelle Garden brought an action in the District Court for Mahnomen County to recover certain of the taxes here in question. She did not allege that the taxes were paid involuntarily. She did not succeed in recovering these taxes. The state court had jurisdiction over Isabelle Garden, as a competent person, and over the subject-matter of the action. Isabelle Garden is bound by the result of this action. The United States is also bound by the results thereof. The United States cannot recover such taxes in the instant case.

Cases Cited—Part II.

Continental National Bank v. *Holland Banking Co.* (C. C. A. 8), 66 F. (2d) 823;
Davis v. *Davis*, 305 U. S. 32;
Engebretson v. *West* (C. C. A. 8, 1940), 111 F. (2d) 528, 532;
Helvering v. *Rhodes' Estate* (C. C. A. 8, 1941), 111 F. (2d) 509;
Holley v. *General American Life Insurance Co.* (C. C. A. 8, 1939), 101 F. (2d) 172;
Missouri Pacific Transportation Co. v. *Priest* (C. C. A. 8, 1941), 117 F. (2d) 32;
Prebyl v. *Prudential Insurance Co. of America* (C. C. A. 8, 1938), 98 F. (2d) 199;
Treinies v. *Sunshine Mining Co.*, 308 U. S. 66, 78;
U. S. v. *Lee*, 108 F. (2d) 936;
U. S. v. *Richards*, 27 F. (2d) 284;
U. S. v. *Spaeth*, *supra.*
U. S. v. *Waller*, *supra.*

Statutes Cited.

Act of May 8, 1906, 34 Stat. 182.

ARGUMENT.

This is a case of first impression. This is the first case in which the United States has sought recovery of taxes paid, voluntarily or otherwise, by an adult, mixed-blood allottee of the White Earth Reservation. There have been actions in state courts by such allottees to recover taxes paid by them. Neither their right to bring such actions nor their binding effect has ever heretofore been questioned. The United States has brought actions to cancel and abate taxes assessed and levied upon such allotments and to enjoin further levies but never before has it sought recovery of such taxes actually paid by such allottees.

The determination of the issues in the instant case rests primarily upon the construction of the Clapp Amendments and, for the first time, of that portion thereof lifting the restriction upon taxation. In making this determination we believe that a discussion of the history of Mahnomen County and the Indians of the White Earth Reservation will be helpful.

Mahnomen County lies entirely within the White Earth Reservation. It was organized as of January 1, 1907, and brought to the Indians the advantages of a county organization in the same manner that they were enjoyed by the whites. County organization with its provisions for an educational system and a much-needed highway system was highly desirable to the White Earth Indians, who sought to advance themselves and their families. Many of the early county officers were Indians. When Mahnomen County was organized the Indians knew that the county could not operate without taxes. They participated in county organization and were willing to subject themselves and their lands to taxation so that they might have schools, roads, and other benefits. Many voluntarily paid their taxes through the years. There have been Indians holding county

offices down through the years to the present time. The United States now says in this action that they had no right to voluntarily subject their allotted lands to taxation and to pay those taxes in order to have schools for their children, roads upon which to travel, and other benefits. The United States upon its own initiative seeks to burden the county with the repayment of the taxes voluntarily paid and perhaps make impossible the continued enjoyment of that which the Indians themselves sought by their voluntary payments, schools, roads, poor relief, and other benefits. The Indians did not reach this right to county organization and to be legally competent persons without a struggle.

The history of the Chippewa shows that a number of treaties were made between them and the United States. Treaties of February 22, 1855, 10 Stat. 1165, March 11, 1863, 12 Stat. 1249, May 7, 1864, 13 Stat. 693, March 19, 1867, 16 Stat. 719. The treaties show a progressively greater desire upon the part of the Indians to have lands suitable to agriculture and to adopt the habits and customs of civilized life. These treaties culminated in the Treaty of March 19, 1867. This treaty recites, among other things, that the reservation previously set aside for these Indians "has been found * * * not adapted for agricultural purposes for the use of such Indians as desire to devote themselves to such pursuits." The treaty then provides for the creation of the White Earth Indian Reservation, which consists of 36 townships. The County of Mahnomen is comprised of 16 of these townships. The treaty makes provision for the purchase of cattle, farming implements, the erection of a sawmill and a grist mill, the erection of school buildings and the development of agriculture. Proof that these Indians had already progressed toward a civilized life is found in the acceptance by the Indians of these provisions in the treaty and the further provision subjecting them to the civil and criminal laws of the state. The continued progress of the White

Earth Indians in the habits and customs of civilized life is evidenced by the demand for individual instead of communal ownership of property which resulted in the passage of the Nelson Act of January 14, 1889 (25 Stat. 642), providing for allotments in severalty. The allotments involved in this action were made and trust patents issued pursuant to the Nelson Act and the General Allotment Act (24 Stat. 390. See Appendix).

At this time the Indians had no control over their allotted lands in the White Earth Reservation except the right of occupancy. The title to such lands was in the United States as trustee for such Indians. The Indians had no right to sell such lands. They had no right to encumber them nor could they subject them to taxation. This brings us to the Clapp Amendments, the changes accomplished by them, and the argument upon the law and the facts.

The controversy in this case resolves itself into two main issues in the argument of which will be encompassed all the specifications of error. We urge and rely upon each and every specification of error.

I. The United States may not recover for the allottee, Isabelle Garden, the taxes upon the lands allotted to her and voluntarily paid by her.

II. The allottee and the United States are bound by the result of an action which she elected to bring in the state court to recover taxes voluntarily paid upon her allotment.

I. The United States may not recover for the allottee, Isabelle Garden, the taxes upon the lands allotted to her and voluntarily paid by her.

The first Clapp Amendment of June 21, 1906, 34 Stat. 325, 353, provides:

> "That all restrictions as to sale, incumbrance, or taxation for allotments within the White Earth Reser-

vation in the State of Minnesota, now or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application."

The second Clapp Amendment of March 1, 1907, 34 Stat. 1034, provides:

"That all restrictions as to the sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed-bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full-bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application."

The enactment of the Clapp Amendments completely changed the status of the White Earth Indians and their relationship to their allotted lands. The language is plain and simple. The amendments deal with both adult, mixed-blood Indians and full-blood Indians. It is essential to note that the Clapp Amendments have certain provisions with reference to adult, mixed-blood Indians and other and dif-

ferent provisions with reference to full-blood Indians. The Circuit Court of Appeals, as we will point out later, failed to note this distinction.

We are concerned in the instant case with the Clapp Amendments as they affect the adult, mixed-blood Indians and their allotted lands in the White Earth Reservation. The full-blood Indians are "competent to handle their own affairs" only when the Secretary of the Interior has issued a patent in fee simple. Not so, the adult, mixed-blood Indians, title to their allotted land was conveyed to them in fee simple through operation of law. The Secretary of the Interior had no discretion to refuse a fee patent to such allottees; that he must issue them upon application as a matter of course and as a mere ministerial act; that an application was really unnecessary and merely a matter of convenience as stated in *United States* v. *Spaeth*, 24 F. Supp. 465, 469:

> "Presumably Congress determined that adult mixed-blood Indians on the White Earth Indian Reservation were capable of self-management so far as their lands were concerned. That the Government recognized the plain intendment of the Clapp Amendment is reflected by the action of the Department in issuing fee patents to the adult mixed-blood White Earth Indians. While in no instance was a fee title patent requested by these Indians, it may be noted that, in all of the allotments referred to in the stipulation, fee title patents have been issued by the Government after the passage of the Clapp Amendment to all allottees but two. It is not probable that the issuance of these fee patents were considered essential in order to give the Indians unrestricted fee title, but they were issued because it was apparently believed that fee title now existed and that a fee title patent would be more convenient for the Indian and his vendors."

This legislative declaration that they "are competent to handle their own affairs" was doubtless highly prized by

adult, mixed-bloods and as significant to them as the Emancipation Proclamation was to negro slaves. It declared a status that was the result of years of struggles and development and which should not be taken away or weakened or impaired by judicial decree except for valid and compelling reasons, none of which exist in the present case.

The Clapp Amendments conferred other equally important rights upon the adult, mixed-blood Indians without which the declaration that they "are competent to handle their own affairs" would have been meaningless. These rights were three in number. They flowed from the removal of the restrictions:

1. as to sale
2. as to incumbrance
3. as to taxation

The failure to remove restrictions as to any one of the three would be inconsistent with the declaration that such allottees "are competent to handle their own affairs." All pertain to the use, management and enjoyment of land.

The legal effect of these amendments was to pass title in fee to the adult, mixed-blood allottees.

U. S. v. *Waller*, 243 U. S. 452;
U. S. v. *Spaeth*, 24 Fed. Supp. 465.

The adult, mixed-blood Indians were determined to be competent by this "legislative judgment."

U. S. v. *Waller, supra.*

All the cases interpreting and construing the Clapp Amendments follow and sustain the conclusion that the White Earth adult, mixed-blood Indians are competent to manage all affairs relating to their allotments.

> "It is at once apparent from reading this act that it deals with two classes, adult mixed blood Indians, concerning whom all restrictions as to sale, incumbrance or

taxation are removed, and full blood Indians, whose right to be free from restrictions shall rest with the Secretary of the Interior, who may remove the same upon being satisfied that such full blood Indians are competent to handle their own affairs." *United States* v. *First National Bank*, 234 U. S. 245, 258.

"Before dealing with its interpretation, it is necessary to have in mind certain matters which are well settled by the previous decisions of this court. The tribal Indians are wards of the Government, and as such under its guardianship. It rests with Congress to determine the time and extent of emancipation. Conferring citizenship is not inconsistent with the continuation of such guardianship, for it has been held that even after the Indians have been made citizens the relation of guardian and ward for some purposes may continue. On the other hand, Congress may relieve the Indians from such guardianship and control, in whole or in part, and may, if it sees fit, clothe them with full rights and responsibilities concerning their property or give to them a partial emancipation if it thinks that course better for their protection. *United States* v. *Nice*, 241 U. S. 591, 598, and cases cited.

* * * * * * *

"The act thus evidences a legislative judgment that adult, mixed-blood Indians are, in the respects dealt with in the act, capable of managing their own affairs, and for that reason they are given full power and authority to dispose of allotted lands. This may be a mistake of judgment as to some cases, and if the allegations of the bill set forth in the certificate in this case are true, it is quite evident that the Indians here involved were incapable of making an intelligent disposition of their lands. But Congress dealt with general conditions, and with these classes of Indians as a whole, and with authority over the subject has given to adult, mixed-blood Indians the full right to dispose of the lands in question. It is not for the courts to question this legislative judgment.

* * * * * * *

"In the case now before us, in whatever other respect the Government of the United States may continue to hold these Indians as wards, needing and receiving protection from its authority over their persons and property, as to the lands in question the United States, in the passage of the Clapp Amendment, evidenced its purpose to grant full power and control to the class named. As to them the Government has no further interest in or control over the lands." (*U. S.* v. *Waller, supra.*)

An examination of *Morrow* v. *United States*, 243 Fed. 854, makes clear that as to adult, mixed-blood Indians of the White Earth Reservation, the question which is determinative of the validity of a tax levy is: Has the Indian availed himself of any power which he might have under the Clapp Amendment? That is the question which the court asks itself. If the Indian has not, the tax must fall. Conversely, it necessarily follows that if he has, the tax must stand. Isabelle Garden availed herself of a right which she had under the Clapp Amendment. She voluntarily paid the taxes upon her allotment. Under 24 Stat. 390 and 34 Stat. 182, she, as fee owner, made use of the State courts to bring an action to recover the taxes paid. The lifting of the restrictions upon her allotment by the Clapp Amendment was made effective by Isabelle Garden's voluntary act in paying her taxes.

"• • • the passage of the Clapp Act, June 21, 1906 (34 Stat. 353), which provided for the removal of all restrictions as to sale, encumbrance, or taxation for allotments within the White Earth Indian Reservation held by adult, mixed-blood Indians, and which further provided that the trust deeds were sufficient for such allottee or allottees to pass title in fee simple, could not disturb this vested right to be free from taxation during the twenty-five year period unless the Indian

willingly changed his status by acceptance of the rights and privileges contained in said amendment.

* * * * * * *

"(7) The removal of the restriction of alienation, however, does not necessarily interfere with or imperil the immunity from taxation. That is a vested right. But while it was necessary to obtain the Indian's consent to divest him of the guaranteed non-taxable land during the twenty-five year period, it was not necessary to obtain his consent to clothe him with authority to alienate his land." (*U. S.* v. *Spaeth*, 24 Fed. Supp. 465, 467.)

The Supreme Court of Minnesota followed the decision in *Waller* v. *U. S., supra*, when in construing the Clapp Amendments in *Baker* v. *McCarthy*, 145 Minn. 167, 170, 176 N. W. 643, it held:

"We think it is the general view that the issuance of a fee-simple patent operates, by implication, to emancipate the Indian from Federal guardianship and jurisdiction. Luck Land Co. *v.* Dickson, 132 Minn. 396, 157 N. W. 655, affirmed 242 U. S. 371, 37 Sup. Ct. 167, 61 L. Ed. 371. We hold that the same result was accomplished by the provision of the Clapp amendments converting the trust deeds theretofore issued in the case of adult mixed-bloods into instruments of fee-simple title, see United States *v.* Waller, 243 U. S. 452, 37 Sup. Ct. 430, 61 L. Ed. 843, and that the Clapp amendments by implication gave to the probate courts of this state jurisdiction to administer the estates and determine the heirs of an adult mixed-blood allottee, whether death occurred before or after these amendments."

Isabelle Garden willingly changed her status by voluntarily paying the taxes upon her allotment.

With the law as settled in the foregoing cases in our minds let us re-examine the pertinent language of the Clapp Amendment.

> "That all restrictions as to sale, encumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult, mixed-blood Indians, are hereby removed * * *."

This part of the amendment does three things:

1. It removes the restriction as to sale.

2. It removes the restriction as to encumbrance.

3. It removes the restriction as to taxation of allotments of adult, mixed-blood Indians.

The order in which these restrictions are lifted is significant. The Congress had declared the adult, mixed-blood Indians to be "competent to handle their own affairs." To implement this declaration, the Congress gave to these Indians the first and greatest legal right. The right to sell their allotted lands. Next, it gave them the right to encumber the lands which was undoubtedly of second greatest importance legally. Last, and perhaps the least of importance from the legal point of view but undoubtedly the greatest from the standpoint of practical importance to the adult, mixed-blood Indians who wished while retaining their lands to have the benefits of county government including schools and roads, the right to subject their lands to taxation. The importance of this right is emphasized by the fact that all lands in Mahnomen County were originally allotted lands.

The inclusion of the third element, taxation, by the Congress was done with deliberation. Its purpose must have been to lift so far as within the power of Congress, the

restriction against taxation. Congress had done its part to make this provision as to taxation effective required affirmative action by the Indian. Isabelle Garden took that action when she voluntarily paid the taxes upon her allotment. It is axiomatic that it is the duty of the courts to give effect to all the provisions of the Clapp Amendment.

The Clapp Amendments are a fully consummated release by the United States of America of all of its control as trustee, of the allotted lands and the acts of the adult, mixed-blood Indians relating thereto. The United State recognized the competency of these Indians and their right to alienate or encumber their lands or subject them to taxation. This was all that the United States, bound as it was by its treaty obligation, could do. It could not divest these Indians of their vested right to have their lands immune from taxation or seizure for debt. As to the adult, mixed-blood Indians, the Clapp Amendments were permissive. The Congress gave them the right, if they wished and only if they wished, to waive their vested right to have their allotted lands immune from taxation and to subject them to taxation.

The conceded and inevitable conclusion is that such adult, mixed-blood Indians had the full right to sell, encumber, dispose of and deal with their allotted lands in any way they saw fit and without necessity of obtaining approval or consent of anyone just as any other competent fee owner might do.

All restrictions upon the adult, mixed-blood Indians' right to consummate voluntarily the "sale, encumbrance, or *taxation* for allotments" were by the express language of the Clapp Amendment removed. (Italics ours.) In the case at bar the allottee, Isabelle Garden, voluntarily subjected her allotment to taxation. She freely and voluntarily paid these taxes. She shared in the benefits which they provided. We have found no statute or court decision author-

izing the recovery of taxes so paid. The United States has no right of recovery in this case.

Tax Payments Were Voluntary.

There is neither allegation nor proof that the tax payments here involved were other than voluntary. The District Court appears to have so regarded them as appears by its language (R. 28).

> "The question as to whether or not the payment of the moneys involved was voluntary or involuntary need give us no concern. The settlements were made by the Indians after they were emancipated and there is no evidence in the case to show that their election to proceed in the manner in which they did was involuntary."

And the Circuit Court also appears to have considered the payments voluntary by its language (R. 50):

> "The County also contends that it should be held that the tax payments which it obtained from Isabelle Garden were voluntary payments and it is presented that under Minnesota law the taxpayer may not recover such voluntary payments of taxes by action in the courts of Minnesota. In this connection stress is laid upon the extent to which the Clapp Amendments operated to emancipate the adult mixed-blood Indians to whom it related, and it is argued that they became in effect sui juris and therefore subject to all the consequences of their acts applicable to others in the state. If others are deemed to waive all objection to illegal taxes by voluntarily paying the same, so it is said should the Indians."

The Circuit Court then apparently from the following language:

> "The argument would not be considered without force if the case was of first impression" (R. 51).

concludes that it is foreclosed by previous decisions from holding that the United States cannot recover taxes volun-

tarily paid by Isabelle Garden. This conclusion is directly contrary to the decision of this court in *Ward* v. *Love County*, 253 U. S. 17, 22, wherein this court said:

> "We accept so much of the Supreme Court's decision as held that, if the payment was voluntary, the moneys could not be recovered back in the absence of a permissive statute, and that there was no such statute. But we are unable to accept its decision in other respects."

There is no permissive statute in Minnesota. Under Minnesota law taxes voluntarily paid cannot be recovered.

Falvey v. *Board of County Commissioners*, 76 Minn. 257, 79 N. W. 302;

Gould v. *Board of County Commissioners*, 76 Minn. 379, 79 N. W. 303, 530.

The Circuit Court therefore erred in assuming that the instant case was controlled by decisions involving different laws and situations and in failing to construe and apply to the facts of the instant case the pertinent provisions of the Clapp Amendments themselves which are the applicable law and must control.

The difference between the Clapp Amendments and the statutes involved in the cases relied upon by the Circuit Court of Appeals is obvious upon comparison.

We shall discuss the cases cited by the Circuit Court upon this point seriatim.

The statute involved in *Choate* v. *Trapp*, 224 U. S. 665, is the act of May 27, 1908, 35 Stat. 312. See Appendix. One "section provided that land from which restrictions had been removed should be subject to taxation." P. 670. Thereupon the state sought to assess taxes upon land without the owner's consent. This court held that this could not be done. If, however, the owner had not objected but had paid voluntarily as in the instant case, this court would

have had an entirely different question before it. The question that is in the instant case. In that case the statute provided directly that the lands should be "subject to taxation." In the instant case, the statute is permissive and operates only with the consent of the Indian who has been declared by the Congress to be competent for that purpose.

In *Board of County Commissioners of Caddo County, Oklahoma,* v. *United States,* 10 Cir., 87 F. 2d 55, the case is determined upon the fact that there was no acceptance of the fee patent. Under the Clapp Amendments the fee title was vested in the adult, mixed-blood Indian, but the lifting of the restrictions was dependent upon the voluntary act of the Indian. In the *Caddo County* case, the court found that the Indian did not consent but on the contrary objected, evidencing that objection by paying the taxes under protest.

The Circuit Court of Appeals also cites *Morrow* v. *United States,* 243 Fed. 854. This case involves the Clapp Amendments. It is an action to restrain the collection of taxes upon allotted land within the White Earth Reservation. Obviously, it does not involve taxes voluntarily paid by an adult, mixed-blood Indian. That this fact was of importance appears from the following language on page 858:

> "His rights are vested and are impervious to alteration *against his will* except through the sovereign power of eminent domain. One of these rights was freedom from state and local taxation." (Italics ours.)

The implication is that he could have voluntarily consented to taxation of his allotted land.

The last case cited at this point by the Circuit Court of Appeals is *Glacier County, Montana,* v. *United States,* 99 F. 2d 733. This is an action to quiet title and to recover taxes paid. The statute involved is the act of May 8, 1906, 34 Stat. 182, see Appendix. Under this act, the Secretary of the Interior issued patents to individual Indians whom

he thought competent. In the Clapp Amendments, the Congress determined certain Indians as a class to be competent and caused title in fee simple to their allotted lands to pass to such Indians. The *Glacier County* case and the cases therein cited turn upon the proposition that under the act there involved title in fee could be conveyed to the Indian only upon his request.

The Circuit Court of Appeals cites the case of *Bryan County, Okla.*, v. *United States*, 123 F. 2d. 782. But examination will show that the statute involved in that case is quite different from the Clapp Amendments. It is the Act of May 27, 1908, 35 Stat. 312, and for convenience we print it in the Appendix to this Brief. It will be noted that the first section pertains only to "alienation or incumbrance" and not to taxation and does not deal with removal of restriction as to taxation at all. Section 4 deals with that and specifically provides that the lands involved "shall be subject to taxation." Of course, this wholly ignores the vested right of the Indian to tax exemption and has been held invalid for that reason. The result is that in Oklahoma the restrictions on taxation stand unchanged and unimpaired by any valid congressional enactment. This is not the situation under the Clapp Amendments.

The Clapp Amendments provide "that all restrictions as to sale, incumbrance, or taxation for allotments • • • held by adult, mixed-blood Indians, are hereby removed." Unlike the Oklahoma statute, this does not attempt to specifically subject the allotted lands to taxation. As stated in the *Waller* case, supra, it (the Clapp Amendments) is a "legislative judgment" that such Indians are competent. As construed by the *Morrow* and *Spaeth* cases, supra, said amendments did not impair the vested right of such allottees to tax exemption and notwithstanding such amendments such allotments could not be legally taxed during

such trust period against the will or without the consent
the Indian. But the implication is clear that the inhibit
against such taxation so far as the United States is c
cerned is removed and that the Indian might consent a
subject his allotment to taxation if he so desired. A
as a member of a community that had organized a coun
and appreciating the need of roads, schools and other be
fits that come only through the expenditure of tax mon
and appreciating also that there would be no adequate t
money unless persons in his class paid taxes, such India
were entirely justified and wise in consenting to taxati
and in paying taxes as many did and as Isabelle Gard
did. So construed, the Clapp Amendments do not impa
vested rights and are valid. But they do remove restr
tions as to taxation so far as the United States is co
cerned.

An Indian may waive and in this case did waive in t
same way that other citizens may waive vested rights.

Sweet v. *Schock*, 245 U. S. 192

Fink v. *County Commissioners*, 248 U. S. 399

The court will note the reference in the opinion of th
Circuit Court of Appeals to the statement in the first stip
lation of facts "that said land was not legally taxab
prior to the year 1928" (R. 13). We respectfully subm
that this stipulation must be read together with the secon
stipulation of facts setting out the record of dates of pa
ments of taxes (R. 13), and the proceedings thereafte
From these it clearly appears that it should have read-
"That said land was not legally taxable prior to the yea
1928 *without the consent of the allottee.*" (Part in italic
supplied.)—and that it did not do so was through inad
vertence since that was clearly the theory upon which th
case was submitted, briefed, and argued in the Distric
Court and Circuit Court of Appeals. This is confirme
by the District Court when it said (R. 28):

> "The question as to whether or not the payment of the moneys involved was voluntary or involuntary need give us no concern. The settlements were made by the Indians after they were emancipated and there is no evidence in the case to show that their election to proceed in the manner in which they did was involuntary."

We think that the two stipulations and the record fairly present the question whether taxes so paid can be recovered. This is the very issue which all parties are seeking to determine by this litigation.

It appears from the language of the trial court, and this is equally true of the Circuit Court, that it failed to confine itself to the provisions of the Clapp Amendment and erroneously applied the statute applicable to Oklahoma Indians. There is a very material difference. The applicable statute in the Oklahoma case, 35 Stat. 312, lifts the restrictions only as to alienation and encumbrance. It also provides that the land so unrestricted shall be subject to taxation. The Oklahoma statute ignores the vested right of the Indian. The Clapp Amendment does not, but merely removes the restriction upon the power of the Indian to subject his land to taxation if he so desires. The Oklahoma case cited by the trial court therefore does not sustain his conclusion as to the White Earth Indians.

The fundamental error of the trial court and the Circuit Court was in assuming that the trust as to Isabelle Garden continued for twenty-five years. The trust terminated when she elected to voluntarily pay the taxes upon her allotment and thereby "willingly changed his (her) status by acceptance of the rights and privileges contained in said (Clapp) amendment." *United States* v. *Spaeth, supra.*

The trial court held properly that the taxes paid after the expiration of the trust period could not be recovered because Isabelle Garden was emancipated (R. 28). This was erroneously reversed by the Circuit Court. Both

courts in permitting the recovery of the money paid during the trust period failed to recognize that at that time Isabelle Garden was also emancipated. This was the trial court's fundamental error because the Clapp Amendment was a "legislative judgment" that Isabelle Garden was capable of managing her own affairs as to her allotment not after the trust period but at the time of the passage of the amendment. See *U. S.* v. *Waller*, 243 U. S. 452, 462. To hold otherwise is to nullify the Clapp Amendment as the restrictions would have lifted without it at the expiration of the trust period. The trial court's reasoning in holding that the money paid after the trust period cannot be recovered is equally persuasive when applied to the payments during the trust period. The Circuit Court mistakenly took the position that the obligation of the government is not discharged until the Indian applies for the fee patent and alienates the land (R. 66). The court fails to distinguish between the two separate provisions of the Clapp Amendments. The one the court relies upon relates to full-blooded Indians. The Circuit Court overlooked the other provision relating to adult, mixed-blood Indians, such as Isabelle Garden. None of the taxes paid should be recovered.

The trial court cites *Warren* v. *Mahnomen County*, 192 Minn. 464, 257 N. W. 77, as authority for the proposition that:

> "The Supreme Court of Minnesota has recognized the right of a mixed-blood Chippewa Indian of the White Earth Indian Reservation to maintain a suit against a county to recover taxes illegally imposed upon his allotment during the trust period" (R. 27).

We entirely agree with this statement. We also agree with the conclusion of the District Court of Minnesota in the case brought by Isabelle Garden that she could not recover the taxes paid by her. The distinction between the

two cases is that in the Warren case the payments were made involuntarily while in the Garden case the payments were made voluntarily. Under Minnesota law taxes voluntarily paid cannot be recovered.

The answer is clear that the United States does not owe a duty to an emancipated Indian to recover taxes voluntarily paid during the twenty-five year trust period.

II. The allottee and the United States are bound by the result of an action which she elected to bring in the state court to recover taxes voluntarily paid upon her allotment.

Isabelle Garden as an adult, mixed-blood Indian is a competent person.

U. S. v. *Waller, supra*

The fee title to the lands here involved passed to Isabelle Garden upon passage of the Clapp Amendment.

U. S. v. *Spaeth, supra*

The voluntary payment of the taxes by Isabelle Garden lifted the restriction upon the land here involved.

See discussion under I.

Upon these facts it appears that the state court was exercising jurisdiction conferred upon it by the Clapp Amendment, supra, and the Acts of Feb. 8, 1887, C. 119, Sec. 6, 24 Stat. 390; and of May 8, 1906, 34 Stat. 182. The judgment of the state court as a court of competent jurisdiction is binding upon the United States.

U. S. v. *Lee*, 108 Fed. (2nd) 936;

U. S. v. *Richards*, 27 Fed. Rep. (2nd) 284;

Treinies v. *Sunshine Mining Co.*, 308 U. S. 66, 78;

Davis v. *Davis*, 305 U. S. 32;

Helvering v. *Rhodes' Estate* (C. C. A. 8, 1941), 117 Fed. (2nd) 509;

Missouri Pacific Transportation Co. v. *Priest* (C. C. A. 8, 1941), 117 Fed. (2nd) 32;

Engebretson v. *West*, (C. C. A. 8, 1940), 111 Fed. (2nd) 528, 532;

Holley v. *General American Life Insurance Co.* (C. C. A. 8, 1939), 101 Fed. (2nd) 172;

Prebyl v. *Prudential Insurance Co. of America* (C. C. A. 8, 1938), 98 Fed. (2nd) 199;

Continental National Bank v. *Holland Banking Co.* (C. C. A. 8), 66 Fed. (2nd) 823.

Conclusion.

Applying the usual rules of construction, among them:

(1) that every part of the enactment shall be given effect;

(2) the validity of the enactment shall be sustained if possible and if, of two possible constructions, one sustains and the other invalidates, the former is favored;

(3) if the Act has been previously construed effect should be given to such construction under the rule of *stare decisis* unless the prior construction is obviously wrong;

(4) effect should be given to the background and purpose of the enactment.

the Clapp Amendments result in three things:

1. A legislative judgment that "adult, mixed-blood Indians are, in the respects realt with in the act, capable of managing their own affairs."

2. A grant to adult, mixed-blood Indians of full power and control over the lands in question, including the right to subject them to taxation.

3. Immediately passed title in fee simple to the adult, mixed-blood Indians, including Isabelle Garden.

It is well recognized in the decisions that a principal object of Indian supervision and legislation is to bring them to a state of competency.

United States v. *Nice*, 241 U. S. 591, 595;
United States v. *Waller, supra;*
Bryan County, Okla., v. *United States, supra.*

The Act of May 8, 1906, gave the state courts jurisdiction over adult, mixed-blood Indians and their allotted lands when, as Isabelle Garden did by her voluntary payment of her taxes, they have accepted the rights and privileges granted by the Clapp Amendment.

Isabelle Garden as a competent person is bound by the result of the state court action brought by her.

The United States "has no further interest or control over the lands." *United States* v. *Waller, supra.*

Taxes voluntarily paid cannot be recovered in the State of Minnesota.

The court below erred in holding that the United States can recover the taxes voluntarily paid by Isabelle Garden.

Respectfully submitted,

GEO. B. SJOSELIUS,
Assistant Attorney General,
State of Minnesota,
Counsel for Petitioner,
102 State Capitol,
St. Paul, Minn.

Of Counsel:
J. A. A. BURNQUIST,
Attorney General of Minnesota,
102 State Capitol,
St. Paul, Minnesota.
L. A. WILSON,
County Attorney, Mahnomen County,
Mahnomen, Minnesota.
LOWELL W. BENSHOOF,
County Attorney, Becker County,
Detroit Lakes, Minnesota.
A. B. STAUNING,
County Attorney, Clearwater County,
Bagley, Minnesota.

APPENDIX.

Section 5 of the General Allotment Act of February 8, 1887, c. 119, 24 Stat. 389, 25 U. S. C. sec. 348, provides:

That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period.

Sections 1 and 3 of the Nelson Act of January 14, 1889, c. 24, 25 Stat. 642, so far as pertinent, provide:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized and directed, within sixty days after the passage of this act, to designate and appoint three Commissioners, one of whom shall be a citizen of Minnesota, whose duty it shall be, as soon as practicable after their appointment, to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated; * * *.

* * * * * * *

Sec. 3. That as soon as the census has been taken, and the cession and relinquishment has been obtained, approved, and ratified, as specified in section one of this act, all of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservation, shall, under the direction of said commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable, under the direction of said commissioners, be allotted lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty-seven, entitled "An act for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes"; • • •.

The Act of May 27, 1908, 35 Stat. 312, provides:

Chap. 199. An Act for the removal of restrictions from part of the lands of allottees of the Five Civilized Tribes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after sixty days from the date of this Act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows: All lands, including homesteads, of said allottees enrolled as intermarried whites, as freedmen, and as mixed-blood Indians having less than half Indian blood including minors shall be free from all restrictions. All lands, except homesteads, of said allottees enrolled as mixed-blood Indians having half or more than half and less than three-quarters Indian blood shall be free from all restrictions.

• • • • • • •

Sec. 4. That all land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes: *Provided,*

That allotted lands shall not be subjected or held liable, to any form of personal claim, or demand, against the allottees arising or existing prior to the removal of restrictions, other than contracts heretofore expressly permitted by law.

* * * * * * *

The Act of May 8, 1906, 34 Stat. 182, provides:

Chap. 2348. An Act to amend section six of an Act approved February eighth, eighteen hundred and eighty-seven, entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section six of an Act approved February eighth, eighteen hundred and eighty-sever, entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," be amended to read as follows:

"Sec. 6. That at the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section five of this Act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made and who has received a patent in fee simple under the provisions of this Act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up within said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges,

and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property: Provided, That the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: Provided further, That until the issuance of fee simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States: And provided further, That the provisions of this Act shall not extend to any Indians in the Indian Territory."

* * * * * * *